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Sectt. II-27—100,000—21-5-52.

Public Separation (1948) Department.

US SERIES.

G.O. No. 3400

Dated 20-12-48

[Despatch Abstract.]

SEPARATION

SEPARATION OF THE JUDICIARY FROM THE EXECUTIVE : POSITION OF VILLAGE COURTS VIS-A-VIS THE SCHEME OF SEPARATION : PAPERS RECORDED.

REVENUE DEPARTMENT

Subject

SEPARATION OF JUDICIARY FROM EXECUTIVE - Collectors' powers under the Village Courts Act - Board's remarks - Submitted.

Station: Madras. B.P. Rt. 2914. Dated, the 6th May 1948

From

P.M. Jayarajan, Esq., Bar-at-Law, I.C.S.,
Secretary, Board of Revenue.

V.N. Kudva, Esq., C.I.E., I.C.S.,
Commissioner of Land Revenue, Excise and Prohibition.

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V.S. Hejmadi, Esq., I.C.S.,
Commissioner of Civil Supplies and Separate Revenue.

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W.R.S. Sathianathan, Esq., I.C.S.,
Commissioner of Land Revenue and Commercial Taxes.

Read:

B.P. Mis. 503 dated the 15th April 1948.

RESOLUTION:

Under the Village Courts Act (I of 1889) a village court means either a Panchayat Court or a Village Headman's Court. The Headman is appointed as a "Court" only in villages where there is no Panchayat Court. Village Courts exercise primarily civil powers. They have to be specially empowered under Section 76 of the Act if they are to exercise Criminal jurisdiction.

2. In paragraph 65 of their Report the Committee (on the Separation of the Judiciary from the Executive) recommended that Panchayat Courts be extended to every place, except where, owing to the existence of party feeling or other local cause, it is ~~ex~~ inexpedient to do so. This recommendation seems to the Board acceptable.

3. The functions of the Revenue Department in regard to Panchayat Courts are at present the following:-

(i) The Tahsildar conducts elections. The Revenue Divisional Officer and the Collector are the appellate and revisional authorities in regard to objections raised at the elections;

(ii) The Collector is competent to remove or suspend a member of a Panchayat Court for misconduct etc. The Board and the High Court are the appellate authorities against such orders, vide Section 8 of the Act.

(iii) The village munsiff has to help in the matter of service of notices, execution of decrees etc.

(iv) The Sub Divisional Magistrate and District Magistrate have powers to transfer criminal cases from one Panchayat Court to another; and also to set aside convictions on certain grounds (vide Section 76(8) of the Act); a n d

(v) The Revenue Divisional Officer has to inspect the records of Panchayat Courts. (The District Munsiff also inspects Panchayat Courts in regard to their Civil Work.)

4. The powers of the Revenue Department in regard to village panchayat and village courts will have to be decided when the separation of judiciay from the executive is given effect to. The Board considers it ~~Essential~~ that the Revenue Department Officials who are in closer touch with the trend of the officers of the villages should continue to exercise the functions mentioned in items (i) and (ii) above. The functions mentioned in Nos. (iv) and (v) above, may in the opinion of the Board be transferred to the Judicial Magistrates. The processes will have to continue to be served by the village menial establishment.

5. The Board submits the above report for the consideration of Government.

Sd/. for Secretary.

To the Secretary to Government of Madras (Public Separation) Departmen

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Finance (Reorganisation) Department.

REORGANIZATION OF PROCESS SERVICE ESTABLISHMENT.

The Retrenchment and Reorganization Committee considered the question of the reorganisation of the Process Service Establishment at its meeting held on the 1st May 1948 and minuted as follows:-

Reorganization of the Process Service Establishment: The Committee is impressed with the arguments, advanced by the High Court and the Board of Revenue against the constitution of a Central organization for process services and it does not consider that it is advisable to have a Central Agency for serving process of all kinds for execution of decrees. The Committee would recommend an examination of the receipts for service of summons and other processes and for execution work in all the courts and wherever the receipts are far below the cost incurred in the maintenance of the establishment of Process Servers and Amins and the office staff, necessary retrenchment may be effected. Service of processes through parties may be relied upon to a larger extent.

So far as Criminal Courts are concerned, there seems to be different systems followed in different districts and figures furnished by the Inspector-General of Police show very large disparity between districts; for instance Cuddapah is said to be employing three constables, while Malabar has got 102 constables even though the figures of processes served do not justify this disparity. The Committee would recommend that one common system may be adopted in all districts. If, as may be presumed in some districts the ordinary police staff are able to serve processes also, there seems to be no reason why the same procedure may not be followed in other districts as well instead of having a separate staff of constables for this purpose. This suggestion may be examined by the Inspector-General of Police and his remarks called for.

So far as the Revenue processes are concerned the present system of having them served through village officials except where special agency is required temporarily, seems to be economical and this may be continued.

2. The above recommendation may be communicated to the Revenue and Home Departments for further action. They may be requested to communicate to this section a copy of the orders issued together with an estimate of financial effect of accepting the Committee's recommendations for incorporation in the Committee's Report.

C.O. COOREY
Secretary, Retrenchment and Reorganisation Committee.

Public (Separation) Department.

Please see the ref. from the Board of Revenue on pp 1-2 c.f. The points raised for consideration mainly relate to the powers of the Reve. Deptt. in regard to the Village Panchayat and Village Courts after the Scheme of separation is given effect to. The position is examined below:

2. Heads of villages, usually styled Village Magisrates, exercise criminal jurisdiction under section 10 - First - of Madras Regulation XI of 1816 and Section 6 of Madras Regulation IX of 1821. When a Panchayat Court is established for a village under section 9 (1) of the Madras Village Courts Act, 1888 (Madras Act I of 1889) the Court of the Village Munsiff appointed under Section 7 of that Act ceases to exercise jurisdiction under it. But in as much as the Court of the Village Munsiff exercises only civil jurisdiction and in view of the fact that heads of villages exercise jurisdiction in criminal cases under the provisions of the Madras Regulations aforesaid, it does not appear that the mere establishment of the Panchayat Court under Section 9 (1) for any village will abrogate the criminal jurisdiction conferred on heads of villages by the Regulations. Nor is there any provision in Chapter VIII of the Madras Village Courts Act (which provides for empowering Panchayat Courts to take cognizance of and try certain offeences) taking away the criminal jurisdiction conferred by the Regulations, when Panchayat Courts are so empowered.

3. So far as Village Courts and Panchayat Courts are concerned, the logical extension of the principle of the Separation of the Judiciary from the Executive would call for transfer of all judicial powers exercised by village headman to Panchayat Courts. In paragraph 65 of its Report the Committee recommended that Panchayat Courts be extended to every place except where owing to the existence of party feeling or other local cuase, it is inexpedient to do so. The Committee also suggested transfer to these courts trial of offences under certain Penal Enactments; namely, Cattle Tresspass Act, Prevention of Cruelty to Animals Act, by a notification under Section 76 (c) of the Madras Village Courts Act. The organisation of Village Courts is out of the purview of the Scheme of Separation. These Courts may be left as they are subject to the recommendations referred to above.

4. The members of the Village Courts are elected, the conduct of elections being in the hands of a Revenue Officer of the rank of a Tahsildar. The Revenue Divisional Officer and the Collector are the appellate and revisional authorities in regard to objections raised at the elections. The Board proposes that the existing arrangements may continue, under the new set up. This may be agreed to.

Section 8 of the Village Courts Act empowers Collector to suspend or remove a member of a Panchayat Court for incapacity, neglect of duties, misconduct, or other just and sufficient cause. An Appeal lies against such orders of the Collector to the Board or to the High Court as the case may be. The Board considers that such control as is now being exercised for these Village Courts should continue to be exercised on the spot by the officials of the Revenue Department who are in closer touch with the trend of the officers of the villages. It is obvious that such control should be by someone who knows the circumstances and officers of the Revenue Department in the very nature of their duties are expected to be familiar with the affairs of the villages. This may be accepted.

5. Under sub-section (7) and (8) of Section 76 of the Village Courts Act, the Sub Divisional Magistrate and the District Magistrate have powers to transfer criminal cases from one Panchaya Court to another and also to set aside convictions on certain grounds. The Collector of the district arranges for an annual inspection by his subordinate officials of the records of Panchayat courts. The District Munsiff also inspects Panchayat Courts in regard to the civil work. The Board suggests that these functions may be transferred to the Judicial Magistrates under the

the new set up. This may be agreed to.

5. The Village Munsiff has to help in the matter of service of notices, execution of decrees etc. The Board is of opinion that the processes should continue to be served by the Village Menial Establishment. Some time back there was a proposal to entrust the process service to the Police Department, but the proposal appears to have been dropped. Home may be in a position to throw some light in the matter. In the absence of an altenative process serving agenc the existing arrangements in this behalf may continue.

Home and Revenue may see for remarks

The suggestions of the Board may be accepted.

P.V.B(alakrishna Ayyar)/13..
Secretary.

HOME DEPARTMENT.

The letter from the Board of Revenue on pp 1-2 c.f. and the notes of the Pub (Sepration) Deptt. on pp 3-5 above may be perused. Action on the recommendation referred to at "A" on pp 3-4 ante may be taken after final orders are passed on this case.

2. Para 6 of the Pub.(Sept) Deptts' note above: In connection with the consideration of the question of the Reorganisation of the Process Service Establishment, the Retrenchment and Reorganisation Committee was imprseed with the agruments advanced by the High Court and the Board of Revenue against the constitution of a Central Organisation for process service and did not consider it advisable to have a Central Agency for serving processes of all kinds for execution of decrees - Please see "A" on p. 1 of the copy of the recommendations of the Retrenchment and Reorganisation Committee at flag B.

The rererence to the proposal to entrust the process service to the Police Department referred to at "B" on p. 5 ante seems to relate to the suggestion of the Reorganisation Committee at S on p. 1 of B which relates to criminal courts. This matter is separately under consideration. So far as Village Courts are concerned, under Section 11 of the Madras Village Courts Act,1888, it is the duty of the Village servants usually employed in carrying messages to serve all summonses, notices and orders issued under that Act. Power is given to the Collector under Section 12 of the Act to appoint any person in lieu of, or in addition to the village servant, if it is found necessary. The Board of Revenue has specifically observed that the processes of panchayat courts will have to continue to be served by the village menial establishment. In the circumstances this Deptt. may also accept the Board's suggestion.

The case may be passed on to the Revenue Department.

O.P(ulla) R(eddi)/3.8
Secretary.

REVENUE DEPA.....

Please see the Board's proceedings on pp-1-3 c.f. and the notes on pp-3-6 above. This Deptt. may generally accept the concluions of the Public (Separation) Department on 3-5 ante. The file may be returned to Public (Separation) Department.

S.V(enkateswaran)/14.8.1948
Secretary.

PUBLIC (SEPARATION) DEPARTMENT

The Home and Reve. Deptts. have accepted the proposals of this Department contained in the notes at pp 3-5 above. These may be placed at the next meeting of the Cabinet Committee for its decision.

The suggestion of the Board of Revenue to vest the powers of supervision and control over the magisterial side of the work of Village Courts on the judicial magistrates may be recommended for acceptance by the Cabinet Committee.

xx/18.5.

Recommend item (5).

P.V.B(alakrishna Ayyar)/24.8.

As the scheme is shelved, this file may be recorded in a Ms. G.O. for future reference.

xx/30.12.1948

G.O. (Ms) No. 3400 Pub (Sepration) dated 30-12-1948

Abstract

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SEPARATION OF THE JUDICIARY FROM THE EXECUTIVE - Position of Village Courtes - vis-a-vis the Scheme of separation - Papers - Recorded.

/True copy/

Office Assistant,
Madras Record Office, Egmore.